HIGH COURT OF UTTARANCHAL AT NAINITAL

Writ Petition No. 612 (M/S) of 2006

With

Stay Application No.6255/06

1. M/s Zaz Sons Exports Pvt. Ltd.
   Having its office at Jajmou, Kanpur, through its
   Managing Director, Zahid Hussain S/o Zakir Hussain.
2. Mr. Tahir Hussain S/o Zahid Hussain,
   R/o Jajmou Kanpur (U.P.) ....Petitioners

Vs

Sri Akhil kumar S/o late Sri Vigyan Prakash,
R/o 90, Raja Road, Dehradun,
Sole Proprietor M/s Akhil Lime and Minerals,
Having its office at 90, Rajpur Road, Dehradun,
Through its Power of Attorney/Director Sir Sunil
Kumar Gupta, S/o late Shri Vigyana Prakash,
R/o 90, Rajpur Road, at present R/o G-37,
Race Course, Dehradun .....Respondents

Sri Siddhartha Sah learned counsel for the petitioners.

Dated: - 23-5-2006

Hon'ble B.S. Verma, J.

Heard Sri Siddhartha Sah learned counsel for the petitioners.

The petitioners have filed the present writ petition against the impugned order dated 26-4-2006 passed by the Court of Additional District Judge/ 6th F.T.C. Dehradun in M.C.A. No. 145 of 2005 M/s Zaz Sons and another Vs. Akhil Kumar, Annexure-4 to the writ petition whereby the application 17D for adjournment filed on behalf of the applicant/appellant has been rejected on the ground that the applicant is lingering on the proceedings and the Misc. Case No. 145 of 2005 was also dismissed in default of applicant.

It has been argued by the learned counsel for the petitioners that the appeal was not admitted and delay condonation application was also pending. The appeal was filed after prescribed time. Hence, it

was registered as M.C.A. No.145 of 2005 and no remedy is available to file the application under Order 41 Rule19 of C.P.C.

The argument of the learned counsel for the petitioners are misconceived, if, the application is not maintainable under Order 41 Rule 19 of C.P.C. he may file the application under section 151 of C.P.C.

In view of the above, the writ petition is dismissed in limine.

However, the petitioners would be at liberty to file the recall application before the Court concerned.

(B.S. Verma,J)

Dated:- 23-5-2006

M.K.